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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/826,957

04/08/2004

Howard G. Dolezal JR.

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CARGILL, INCORPORATED  
P.O. Box 5624  
MINNEAPOLIS, MN 55440-5624

EXAMINER

STULII, VERA

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/29/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/826,957	<b>Applicant(s)</b> DOLEZAL ET AL.	
	<b>Examiner</b> VERA STULII	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-7,9-16,19-67,69 and 70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7,9-16,19-67,69 and 70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The Examiner for this application has changed to Vera Stulii (AU 1794).

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/13/2009 has been entered.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 5, 6, 9-25, 27, 34-39, 40-43, 50-52, 53-57 and 67-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al. (US 2002/0054941, pages 1-5) in view of Paterson et al (US 2003/0180439). Calkins et al discloses enhancing the tenderness of dark-cutting beef by treating with a composition including citric acid or a salt thereof in an amount as claimed by applicant (claims 23-25, 27) in order to obtain a pH as claimed by applicant (claims 12-16, 20). The treatment occurs by injection, marinating or spraying and is followed by packaging of the beef. Calkins et al. do not disclose treatment after onset of rigor mortis. Paterson et al discloses that certain treatments of meat were traditionally done pre-rigor mortis (sodium bicarbonate injection). Paterson et al further discloses that such pre-rigor treatment could be

Art Unit: 1794

performed “either pre-rigor mortis or post-rigor mortis” ([0024]). Since Paterson et al disclose performing a traditional pre-rigor treatment either pre-rigor mortis or post-rigor mortis”, one of ordinary skill in the art would have been motivated to modify Calkins et al and to enhance the tenderness of dark-cutting beef by treating with a composition including citric acid or a salt in order to obtain a pH as recited post-rigor mortis as taught by Paterson et al.

In regard to claims 37-39, 42, 53 and 55, it is noted that dark-cutting meat typically has a pH as claimed by applicant (claim 37, 53). Tumbling meat in a treatment solution (claims 39, 55) and a drip/rest period are conventional techniques in the treatment of meat.

Claims 7, 26, 28, 33, 48, 49, 65 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al in view of Paterson et al (US 2003/0180439) and Komarik (3,526,521, Abstract and cols. 2-3). It would have been obvious to include GDL and sodium erythorbate (claims 7, 8, 26, 48, 49) in the treatment composition of Calkins et al to aid in curing the meat therein since it is well known to treat meat with GDL to lower the pH thereof and with sodium erythorbate to aid in curing, as evidenced by Komarik. The use of sodium acid sulfate as a meat acidulant (claim 28) is conventional.

Claims 29-32 and 45-47 and 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al in view of Paterson et al (US 2003/0180439) and Nakao et al (3,666,488, cols. 2-3). It would have been obvious to include a phosphate buffer (claims 29, 30, 45-47) in the treatment composition used in Calkins et al since it is well

Art Unit: 1794

known to treat meat with a composition including citric acid, as in Calkins et al, and a phosphate buffer, as evidenced by Nakao et al.

Claim 44 and 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Calkins et al in view of Paterson et al (US 2003/0180439) and Tracy et al (4,576,825, cols. 2-3) or Holdren et al (5,736,186, col. 6). It would have been obvious to encapsulate the citric acid used in Calkins et al since it is well known to treat meat with encapsulated citric acid, as evidenced by either Tracy et al or Holdren et al.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-3, 5-7, 9-16, 19-67 and 69-70 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794

VS